

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Palo Alto Unified School District
Fairmeadow Elementary
500 East Meadow Drive
Palo Alto, California 94306

Respondent.

Docket HWCA 2004-0555

CONSENT ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control (Department) and Palo Alto Unified School District (Respondent) enter into this Consent Order and agree as follows:

1. Respondent generates, handles, and, stores hazardous waste at 500 East Meadow Drive, Palo Alto, California 94306 (Site).
2. The Department completed an inspection report on June 30, 2004.
3. The Department alleges the following violations:
 - 3.1. Respondent violated Health and Safety Code, section 25189, subdivision (a); in that on or about March 18, 2003, Respondent failed to accurately enter the date of release of hazardous waste to a hazardous waste transporter on California Uniform Hazardous Waste Manifest Number 22066074.
 - 3.2. Respondent violated California Health and Safety Code, section 25160, subdivision (a)(1), and California Code of Regulations, title 22, section 66262.20, in that prior to March 11, 2003, Respondent offered for transport a container of

hazardous waste solid (lead paint chips) without the use of a California uniform hazardous waste manifest.

3.3. Respondent violated California Code of Regulations, title 22, sections 66262.31 and 66262.32, subdivision (a), in that, prior to March 11, 2003, Respondent offered for transport a container of hazardous waste (lead paint chips) without appropriate United States Department of Transportation labeling in accordance with Code of Federal Regulations, title 49, section 173.304.

3.4. Respondent violated California Code of Regulations, title 22, section 66262.12, subdivision (a), in that, on or about, November 1, 2001, April 30, 2002, May 21, 2002, March 18, 2003, and April 11, 2003, Respondent offered for transport hazardous waste without an Identification Number issued by United States Environmental Protection Agency or the Department.

4. A dispute exists regarding the alleged violations.

5. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

6. Jurisdiction exists pursuant to Health and Safety Code section 25187.

7. Respondent waives any right to a hearing in this matter.

8. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

9. Respondent admits the violations described above.

SCHEDULE FOR COMPLIANCE

10. Respondent shall comply with the following:

10.1.1. Respondent shall ensure that all hazardous waste manifests are properly completed, including entry of the actual date the shipment was released to the transporter.

10.1.2. Respondent shall ensure that a manifest accompanies all shipments of hazardous waste before offering that shipment for transportation.

10.1.3. Respondent shall ensure that all containers of hazardous waste offered for shipment are properly labeled and marked as required by the United States Department of Transportation.

10.1.4. Respondent shall obtain an Identification Number issued by United States Environmental Protection Agency or the Department prior to offering hazardous waste for transport.

10.2. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent to:

Paul S. Kewin, Section Chief
Statewide Compliance Division
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

10.3. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

10.4. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

10.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

10.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

10.7. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

10.8. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

10.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

10.12. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

10.13. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PENALTY

11. Within 30 days of the effective date of this Consent Order, Respondent shall pay the Department a total of \$5,000. Respondent's check shall be made payable to Department of Toxic Substances Control, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Paul S. Kewin, Section Chief
Statewide Compliance Division
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

James J. Grace
Staff Counsel
Office of Legal Counsel and Investigations
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

11.1. The penalty shall be reduced by \$5,000 if and only if, Respondent sends at least 3 employees to the California Compliance School, Modules I-IV, and submits to the Department, within 180 days of the effective date of this Consent Order, Certificates of Satisfactory Completion thereof.

11.2. In the event that the above Certificates of Satisfactory Completion are not all received by the Department with 180 days of the effective date of this Consent Order, the entire remaining balance of \$5,000 shall then become due and payable.

11.3. If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department pursuing collection including attorney's fees.

OTHER PROVISIONS

12.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

12.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

12.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

12.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

12.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

Dated: 9/6/05

(Original signed by Peter Pearne)
Respondent

Peter Pearne, Manager
Name and Title of Respondent

Dated: 9/16/05

(Original signed by Paul Kewin)
Paul S. Kewin, Section Chief
Northern California Branch
Statewide Compliance Division
Department of Toxic Substances Control